

## CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is made at Fairfield, California, as of August 10, 2018, by and between the City of Fairfield, a municipal corporation (the "CITY") and Applied Facts ("CONSULTANT"), who agree as follows:

1) SERVICES. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A." CONSULTANT shall provide services only upon the written request and notice to proceed (electronic mail message acceptable) from an authorized representative of the CITY.

2) PAYMENT. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." Total compensation for services rendered shall not exceed a maximum total of \$25,000.00 inclusive of any and all expenses during the term of the Agreement. The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) FACILITIES AND EQUIPMENT. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment, which may be required for furnishing services pursuant to this Agreement.

4) GENERAL PROVISIONS. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) INSURANCE REQUIREMENTS. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) TERM. This agreement shall be in effect through December 31, 2018 or until the scope of work is completed, whichever comes first.

EXECUTED as of the day first above-stated.

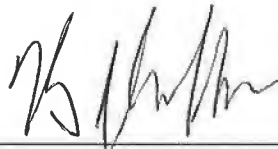
**CITY OF FAIRFIELD, A MUNICIPAL CORPORATION:**

By: \_\_\_\_\_

David A. White, City Manager 

**APPLIED FACTS:**

By: \_\_\_\_\_

Henry J. Kupperman, Executive  
Managing Director and General  
Counsel 

**EXHIBIT "A"**

**SCOPE OF SERVICE**

**SEE ATTACHED PROPOSAL**

901 Corporate Center Drive  
Suite 104  
Monterey Park, CA  
Tel.: (213) 892-8700  
Fax: (213) 683-1939  
<http://www.appliedfacts.com>

# Applied Facts

**To: Richards, Watson & Gershon**

**Re: Due Diligence Proposal**

**Date: June 5, 2018**

## **INTRODUCTION**

This proposal is submitted at your request in connection with your legal representation of your client. It is based upon our discussion in which you shared your legal thoughts and impressions. As such, it is governed by all applicable legal protections, including attorney work product doctrine and attorney client privilege.

You have informed us that you represent a municipality that needs due diligence performed on prospective purchasers of real estate in your client's jurisdiction.

## **THE DUE DILIGENCE PROCESS**

Our work will consist of a review of public record on each subject. This will include items available in the public record, such as civil and criminal litigation, liens, judgments, UCC filings, bankruptcies, regulatory issues, and media. Our search will include those jurisdictions where the subject has maintained an address or conducted a known real estate project.

Prior to commencement of our work, we will provide you with a list of questions for the subjects to answer in writing. Some of these ask for information to help identify the subject in the public record (such as date of birth). Other questions will focus on potential issues, such as disclosure of civil and criminal litigation. We recommend that as part of this process, the individual subjects sign a Fair Credit Reporting Act waiver.

As part of our research, we will compare the answers of the subjects with what we find in the public record to see if there are any inconsistencies.

At the conclusion of our work, we will provide you with a report detailing our findings. This will include an analysis of the consistency of the subject's written answers with what was found in the public record.

## **ABOUT APPLIED FACTS**

Applied Facts specializes in conducting investigative due diligence in connection with mergers, acquisitions, joint ventures, and investments. We have particular expertise in conducting due diligence on entities and individuals involved in real estate projects. We also have extensive experience working for municipalities.

The firm is also recognized as experts in investigation money laundering. We have provided guidance on anti-money laundering procedures for financial institutions as well as investigated many matters involving fraud, embezzlement, and the concealment of funds. We have provided guidance to staff member of U.S. senators and congressmen on how to strengthen federal laws to deter and detect money laundering.

Our firm has investigative capabilities in 178 countries. The professional staff includes experts with the highest levels of experience in law, law enforcement, intelligence services, investigative journalism, forensic accounting, computer forensics, and security consulting.

We also provide a broad range of services that include the following:

- Internal Investigations
- Whistleblower Matters
- Labor and Employment Investigations
- Fraud Detection
- Litigation Support and Intelligence
- Asset Tracing
- Anti-Money Laundering
- Intellectual Property Investigations, including copyright, trademark and patent matters and suspected misappropriation of trade secrets
- FCPA and U.K. Bribery Act Investigations
- Export Control Act Due Diligence
- Security Consulting, including threat assessment and workplace violence services

#### **BUDGET**

For the type of work requested, we normally charge a flat professional fee of \$3,000 for each individual or entity. In addition, we will bill the client for expenses. These can include items such as database charges, charges for retrieval of public records, and mileage.

Please note that the fees may be subject to modification if the matter is unusually complex. In such a case, we will notify you in advance of incurring such fees.

If the client, wishes to proceed, we will prepare a Letter of Engagement. We appreciate the opportunity to be of service.

## **EXHIBIT "B"**

### **PAYMENT**

1. The total contract price for services rendered by CONSULTANT under this Agreement shall not exceed the amount of \$25,000 comprised of:
  - a. For each individual or entity investigated, a flat professional fee of \$3,000 shall be charged plus expenses.
2. CONSULTANT's administrative, overhead, secretarial time or overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are not included in the flat professional fee and shall be billed and furnished with submitted monthly invoices. Receipts for any direct costs in excess of \$50.00 must be furnished with monthly invoices.
3. Upon receipt of an invoice for time and materials and successful completion of services itemized in Exhibit "A" Scope of Services, a payment in the amount of the invoice shall be made to CONSULTANT.
4. Payment shall be made to CONSULTANT:

Applied Facts

901 Corporate Center Drive, Suite 104

Monterey Park, CA 91754

(213) 892-8700

Attn: Henry J. Kupperman, Executive Managing Director and General Counsel

Invoices shall be submitted to CITY via:

City of Fairfield

Fairfield City Hall

1000 Webster Street, 2<sup>nd</sup> Floor

Fairfield, CA 94533-4884

707-428-7454

Attn: Director of Community Development

5. Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to by the CITY and CONSULTANT, and shall be billed in accordance with the provisions of Exhibit "B".

## EXHIBIT "C"

### GENERAL PROVISIONS

1) INDEPENDENT CONSULTANT. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) LICENSES; PERMITS; ETC. CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature, which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals, which are legally required for CONSULTANT to practice his profession.

3) TIME. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

4) CONSULTANT NOT AN AGENT. Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) ASSIGNMENT PROHIBITED. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) PERSONNEL. CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) STANDARD OF PERFORMANCE. CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products, which CONSULTANT delivers to CITY pursuant to this Agreement, shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.



8) CANCELLATION OF AGREEMENT. This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) PRODUCTS OF CONSULTING. All products of the CONSULTANT provided under this Agreement shall be the property of the CITY.

10) INDEMNIFY AND HOLD HARMLESS.

a) If AGREEMENT is an agreement for design professional services subject to California Civil Code § 2782.8(a) and CONSULTANT is a design professional, as defined in California Civil Code § 2782.8(c)(2), to the fullest extent allowed by law, CONSULTANT shall hold harmless, defend and indemnify the CITY, its officers, agents, employees, and volunteers from and against all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the CONSULTANT, except where caused by the active negligence, sole negligence, or willful misconduct of the CITY.

b) If AGREEMENT is not an agreement for design professional services subject to California Civil Code § 2782.8(a) or CONSULTANT is not a design professional as defined in subsection (a) above, to the fullest extent allowed by law, CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT'S responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

11)PROHIBITED INTERESTS. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12)CONSULTANT NOT A PUBLIC OFFICIAL. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

13)EMPLOYMENT DEVELOPMENT DEPARTMENT REPORTING REQUIREMENTS. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of \$600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide CONSULTANT'S federal tax identification number.

## EXHIBIT "D"

### INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

#### 1) MINIMUM SCOPE AND LIMITS OF INSURANCE

a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of \$1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of \$1,000,000 per accident for bodily injury or disease.

#### 2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$1,000,000 per occurrence.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Garage Keepers Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ Fidelity / Crime / Dishonesty Bond in the minimum amount of \$\_\_\_\_\_
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$\_\_\_\_\_.

### 3) INSURANCE PROVISIONS

a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

- i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.
- ii) For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.
- iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.
- iv) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.
- vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a

current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

e) SUB-CONTRACTORS. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.